



Periodic Review / Retain Regulation Agency Background Document

Agency name	Virginia Department of Health
Virginia Administrative Code (VAC) citation	12VAC5-405
Regulation title	Rules Governing Private Review Agents
Document preparation date	October 24, 2011

This form is used when the agency has done a periodic review of a regulation and plans to retain the regulation without change. This information is required pursuant to Executive Orders 14 (2010) and 58 (1999).

Legal basis

Please identify the state and/or federal legal authority for the regulation, including (1) the most relevant law and/or regulation, and (2) promulgating entity, i.e., agency, board, or person.

The regulation is promulgated under the authority of §32.1-12 and Article 2.1 (§32.1-138.6 et seq.) of Chapter 5 of Title 32.1 of the Code of Virginia (Code). Section 32.1-12 grants the Board of Health the legal authority “to make, adopt, promulgate, and enforce such regulations necessary to carry out the provisions of Title 32.1 of the Code.” Section 32.1-138.15 of the Code allows the department to promulgate regulations for private review agents to implement the provisions of [Article 2.1]. Section 32.1-138.7 of the Code permits the Commissioner to grant or renew certificates of registration to private review agents found in compliance with the provisions of the Code and the regulations of the Board.

Alternatives

Please describe all viable alternatives for achieving the purpose of the existing regulation that have been considered as part of the periodic review process. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving the purpose of the regulation.

The regulation is clearly and directly mandated in law. The regulation honors the Department’s statutory charge and is the least burdensome alternative for adequately addressing the mandate of the law.

Public comment

Please summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

No public comments were received.

Effectiveness

Please indicate whether the regulation meets the criteria set out in Executive Order 14 (2010), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.

The regulation meets the criteria set out in Executive Order 14 (2010) as it is clearly mandated by law; is clearly written and easily understandable.

Result

Please state that the agency is recommending that the regulation should stay in effect without change.

The Department of Health is recommending that the regulation remain in effect without change at this time.

Small business impact

In order to minimize the economic impact of regulations on small business, please include, pursuant to § 2.2-4007.1 E and F, a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the complexity of the regulation; (3) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (4) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, include a discussion of the agency's determination whether the regulation should be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.

In Virginia, private review agents (PRA) must obtain a certificate of registration in order to conduct utilization reviews of the necessity, appropriateness and efficiency of hospital, medical or other health care

services to determine whether such services should be covered or provided by an insurer, health services plan, health maintenance organization or other entity or person. Regulation is the tool used by state agencies to provide the necessary consistency for the both PRA and the state officials to measure the PRA's compliance with applicable law. There are 77 PRAs registered to operate in Virginia. The state registration of PRAs is mandated based on compliance with state regulations; therefore all PRAs must be registered and must be in compliance with the applicable law and regulations in order to operate. There are no comparable federal regulations; therefore, the regulation does not overlap, is not duplicative, and does not conflict with federal regulations. The regulation was last evaluated in 2007. Currently, the regulation meets the intent and purpose of the applicable state mandate. Repeal of the regulations can only be achieved through legislative action. The department will continue to monitor its effectiveness and will seek amendment of the regulation in the event such action is deemed warranted. Small businesses are not impacted by the regulation, unless they contract with a PRA or a Managed Care Health Insurance Provider to provide goods or services.

Family impact

Please provide an analysis of the regulation's impact on the institution of the family and family stability.

The regulation does not directly impact the institution of the family or family stability.